

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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UNITED STATES OF AMERICA, : 15-CR-00051-S-PAS-2
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-against- : United States Courthouse
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DAVIS SULLIVAN, et al., : Wednesday, March 8, 2017
Defendant. : 3:00 p.m.
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TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE WILLIAM E. SMITH
UNITED STATES CHIEF DISTRICT COURT JUDGE

A P P E A R A N C E S:

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Court Reporter: Lisa Schwam, CRR, RPR, RMR
Official Court Reporter

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1 (In open court.)

2 THE COURT: All right. Good afternoon. This is
3 the matter of the United States vs. Davis Sullivan.
4 We're here for sentencing this afternoon. Let's begin
5 by having counsel identify themselves for the record,
6 please.

7 MR. DALY: Good afternoon, your Honor.
8 Assistant United States Attorney Paul Daly joined at
9 counsel table by Sergeant Cynthia Trahan of the Rhode
10 Island State Police.

11 MR. CALCAGNI: Good afternoon, your Honor. John
12 Calcagni for Davis Sullivan.

13 THE COURT: All right. Thank you.

14 So we'll begin by reviewing the presentence
15 investigation report that I received from the Office of
16 Probation. Mr. Calcagni, if you could just confirm
17 that you have reviewed the presentence report with your
18 client, that you've been able to answer all of his
19 questions.

20 MR. CALCAGNI: Yes, your Honor. That's
21 accurate.

22 THE COURT: All right. So there are some
23 objections to the presentence report?

24 MR. CALCAGNI: Your Honor, the only objection I
25 really wish to press is that to paragraph 42 which

1 deals with the firearm enhancement. I briefed or
2 outlined in writing yesterday my argument in support of
3 that enhancement not applying to the facts and
4 circumstances of Mr. Sullivan. And I'm prepared to
5 rest on those written submissions unless your Honor has
6 any particular questions.

7 THE COURT: Well, Mr. Daly, do you want to
8 respond to what Mr. Calcagni has argued with respect to
9 the enhancement?

10 MR. DALY: Just briefly if I may, your Honor?

11 THE COURT: All right.

12 MR. DALY: Thank you. Your Honor, the defendant
13 was afforded that two-level increase for possession of
14 a firearm based primarily on two separate aspects of
15 the government's statement of facts set forth at
16 paragraphs, I believe, 13 to 35 of the presentence
17 report. And those two paragraphs that I'm referencing
18 deal with two separate dates.

19 On April 27th of 2015, during the course of the
20 wire interception, there was recorded conversations
21 wherein Mr. Sullivan is speaking with a coconspirator
22 Mr. Hernandez. Mr. Hernandez tells Mr. Sullivan that
23 there are rival gang members on Croyland Road in
24 Providence. Mr. Sullivan is stopped by police in that
25 area minutes later.

1 Immediately after that phone conversation, Mr.
2 Sullivan -- excuse me. Immediately after being stopped
3 by the police, Mr. Sullivan has a subsequent phone
4 conversation with Mr. Hernandez wherein he says to
5 Mr. Hernandez, essentially, I can't believe they didn't
6 find the firearm. And that is summarized at paragraph
7 33 in the presentence report.

8 In addition, your Honor, the firearm enhancement
9 is also justified in paragraph 35 of the presentence
10 report wherein on the day that Mr. Sullivan was taken
11 into custody at Houston Street in Providence, Rhode
12 Island, another individual was present there. She was
13 interviewed by police. They asked, Have you ever kept
14 a weapon at the residence? And she advised, Yes, but
15 two weeks ago I told him to take the handgun out
16 because I didn't want it there.

17 The relevancy of these statements, your Honor,
18 as regards to the drug trafficking and their
19 establishing that he possessed a firearm, include the
20 following facts: The vehicle that he was stopped in on
21 April 27th by the police and the one where he told
22 Mr. Hernandez I can't believe they didn't find the gun
23 in the car, was the gun that he used repeatedly through
24 March till May as a vehicle -- excuse me. Was the
25 vehicle that he used between March and May to

1 facilitate his drug-trafficking operation. He used it
2 to supply the runners. He used it to pick up drugs.
3 He used it to participate in meetings with other
4 coconspirators. So that vehicle was critical to the
5 operation of the drug-trafficking conspiracy, and
6 that's where he said he had the firearm on April 27th
7 of 2015.

8 With regard to June 11th of 2015 and his
9 admission to the cotenant that he had a gun there in
10 the weeks before, it's relevant with regard to this
11 enhancement, your Honor, because on June 11th when he's
12 arrested there are quantities of drugs found at that
13 residence including approximately 23 grams of crack
14 cocaine. So I'd suggest to the Court that as noted in
15 Commentary 11 to the Section 2D1.1(b)(1) of the
16 Guidelines, is it clearly improbable that the defendant
17 possessed -- excuse me, that the possessed firearm was
18 connected to this offense?

19 I would say to the Court, no, it's not clearly
20 improbable that the firearm that the defendant admitted
21 possessing to both Jonathan Hernandez and to his
22 roommate, it's not clearly improbable that a firearm
23 that he possessed was connected to this offense. Thank
24 you, your Honor.

25 THE COURT: Okay. Thank you.

1 All right. Well, this is not a situation that's
2 like the more typical situation where a firearm is
3 discovered in the course of the arrest. And here there
4 was no firearm found. But the Guidelines don't require
5 a firearm to actually be found in order for the
6 enhancement to apply; rather, it just has to be as Mr.
7 Daly said, or another way of saying it is that it's
8 more probable than not that a firearm was possessed in
9 connection with the crime.

10 And really perhaps the best evidence of that
11 would be the fact of a firearm being found. But the
12 next best evidence it seems to me is the evidence that
13 there is here, which is a recorded conversation in
14 which the defendant in his own words makes a statement
15 that clearly demonstrates that a firearm was possessed.

16 So I think that the requirement of the Guideline
17 provision and the commentary to the Guideline provision
18 would support the finding by probation that a firearm
19 was possessed, and so for that reason I'm going to deny
20 the objection.

21 So as Mr. Calcagni said, that's the only
22 objection that's being pressed so with that I'm going
23 to accept the presentence investigation report as it's
24 currently drafted, and I'm going to utilize it for
25 purposes of sentencing here this morning -- or this

1 afternoon.

2 So I'm going to now set forth on the record the
3 advisory Guideline calculations as they are described
4 in the presentence report. And then we'll move from
5 that to hearing from counsel with regard to the
6 appropriate sentence.

7 So we begin with the base offense level on Count
8 One, the conspiracy count. That level is 26. The
9 two-level enhancement that we just discussed is
10 applied. There's also an adjustment for the
11 defendant's role. He receives a three-point adjustment
12 because he was a manager or supervisor but not an
13 organizer or leader. And all of that yields an
14 adjusted offense level of 31. The defendant receives a
15 three-point downward adjustment for acceptance of
16 responsibility. And that gives him a total offense
17 level of 28.

18 The defendant's criminal history is summarized
19 in paragraph 58 of the report. He has two criminal
20 history points. He receives an additional two points
21 because he committed this offense while he was under a
22 Criminal Justice sentence in a state court matter. And
23 therefore, he has a total of four criminal history
24 points which places him in Criminal History Category
25 III.

1 So at level 28 and Criminal History Category of
2 III, the defendant's advisory Guideline range is 97 to
3 121 months of incarceration. There is a five-year
4 mandatory minimum that applies in this case.

5 So I'll hear first from the government with
6 respect to the appropriate sentence.

7 MR. DALY: Thank you, your Honor. The
8 government filed with the Court a sentencing memorandum
9 which I'm sure the Court is aware of and has reviewed.
10 And without forfeiting the position which is set forth
11 in that sentencing memorandum which is, essentially,
12 the government believes a Guideline sentence here is
13 appropriate, having experienced a few of the
14 sentencings in this case with you, I think my time
15 might be better served and the Court's probably more
16 interested in the space between 60 months and 72. So
17 I'll focus my energy there. Although I'm not
18 forfeiting in any way the argument that we think a
19 Guideline range sentence is appropriate.

20 THE COURT: I understand.

21 MR. DALY: Thank you, your Honor. Your Honor, a
22 natural place to start might be looking at how the
23 other codefendants who have been sentenced or
24 individuals associated with this activity have been
25 sentenced as a baseline. You had before you just a few

1 weeks ago Mr. Hernandez and you've had others as well.
2 Let me just sort of break it into three categories.
3 That sort of provides some perspective.

4 There were a group of individuals who were
5 prosecuted in state court referenced in Mr. Calcagni's
6 memorandum and in mine as well. There's a group of
7 individuals who were prosecuted in federal court -- I'm
8 going to call the cocaine group -- and then there's a
9 heroin group who have all appeared before you, your
10 Honor.

11 With regard to the state offenders, they have
12 all -- their cases have all been adjudicated in state
13 court. The wire interceptions in this case, the Court
14 authorized wire interceptions from March until May of
15 2015 with the result of a lengthier investigation by
16 the FBI's Safe Streets Task Force. That investigation
17 included a series of controlled buys where a cooperator
18 purchased narcotics from a member or members of this
19 organization using the same method that the
20 investigators uncovered during their March to May wire
21 intercept investigation; that is, that a call was
22 placed to the dispatch phone of the organization and
23 then a runner delivered the drugs to a purchaser.

24 Prior to March of 2015 and part of the
25 foundation for the wiretap was that the cooperator

1 called the dispatch phone and then met with a member of
2 the organization and purchased drugs. The individuals
3 who were prosecuted in the state court were the
4 individuals who made the deliveries of heroin to the
5 cooperator which were the predicates or the foundation
6 for the wire intercept investigation. The individuals
7 in state court were all charged with between one and
8 six deliveries of heroin.

9 But bearing in mind that those purchases were
10 for fractions of a gram, between one and -- excuse me,
11 between .3 or .4 grams of heroin each time. So for
12 sake of discussion, one of the individuals in state
13 court, Jose Alvarez, made six deliveries. The total
14 amount of heroin he would have delivered under that
15 formula would be approximately 2.4 grams of heroin.

16 The six individuals who were convicted in state
17 court all by pleas received between 9 months and 30
18 months to serve. The individual who received the most
19 significant sentence in state court was Michael
20 Akinrinlola. He was convicted of four deliveries to
21 the cooperator.

22 The next group, next block of individuals who
23 were the targets of this investigation, were the
24 cocaine group. And you've heard about them; John Lenis
25 Steven Lenis, Fernando Holguin, Victor Cortes and Jason

1 Orange. Those individuals received between 18 and 46
2 months, but all of those individuals pled to offenses
3 related to the cocaine aspect of this investigation.

4 Now, Mr. Calcagni makes reference in his memo to
5 the fact that the Lenis brothers supplied the heroin to
6 the Hernandez organization. That information comes
7 from the government because that's the government's
8 working theory. The wiretap investigation yielded a
9 high level of suspicion that the Lenis brothers were a
10 supplier of heroin to the Hernandez organization. And
11 most certainly had there been sufficient evidence to
12 charge them with that, they certainly would have been.

13 It was sufficient evidence to both charge and
14 convict them of being cocaine distributors and also
15 conspiring with other individuals -- Holguin, Cortes
16 and Orange -- to distribute cocaine, but there was
17 simply not enough evidence to charge them on the heroin
18 side. Those individuals, as I say, received sentences
19 between 18 months to serve and 46 months to serve.

20 The next group or the next block --

21 THE COURT: Those are Judge McConnell's
22 defendants.

23 MR. DALY: They were, yes.

24 And the third block of individuals are the
25 heroin distribution group who appeared before your

1 Honor, and your Honor is quite familiar with those
2 sentences.

3 I would say that sort of for comparison
4 purposes, you know, Mr. Hernandez received 6 months,
5 the 72-month sentence that you gave -- excuse me, 6
6 years, the 72-month sentence that you recently gave
7 him. And still outstanding is Gianfranco Rodriguez.
8 Gianfranco Rodriguez at this time is facing a five-year
9 mandatory minimum sentence.

10 With regard to the federal offenders, Mr. Nunez
11 and Mr. Brown who are in the deferred sentencing
12 program, they accepted responsibility; Mr. Nunez for
13 105 grams of heroin, Mr. Brown for 161 grams.
14 Mr. Pena, who was sentenced by you to 24 months to
15 serve accepted responsibility for 256 grams. And
16 Mr. Rodriguez has accepted responsibility for 134
17 grams.

18 This defendant, like coconspirator Jonathan
19 Hernandez, is responsible for 560 grams of heroin,
20 substantially more than anybody else. And that's a
21 reflection of his role here in the organization which
22 led to him receiving an enhancement for his role. So
23 I'd suggest to the Court that Mr. Rodriguez at 134
24 grams will receive, if the landscape doesn't change, 60
25 months. Mr. Hernandez will receive -- has received 72

1 months.

2 In addition, your Honor, to looking simply at
3 comparison -- looking at these individuals
4 comparatively, there's a couple of other things I'd
5 just like to speak about, your Honor, one being the
6 criminal history of the defendant. Mr. Calcagni in his
7 memorandum yesterday commented on the -- essentially
8 what is -- or functionally what is an argument that his
9 criminal history overrepresented, although technically
10 it doesn't meet the standard I guess for a reduction in
11 the Guideline range.

12 I would suggest to the Court that a floor in the
13 argument is this, your Honor: The date cited as the
14 offense date is June of 2015 which is Mr. Sullivan's
15 arrest date. And from that arrest date the argument
16 then flows that he would have been off probation in six
17 months and had he been off -- you know, he almost made
18 it to the end of probation so the two points that he
19 received committing this offense while on probation
20 simply overreflects his true criminal history.

21 I suggest to the Court that there is evidence
22 that his involvement in this conspiracy predates June
23 of 2015 by a period of time substantially so that the
24 Court can feel comfortable that the defendant simply
25 didn't, you know, get involved here right at the end of

1 his period of probation.

2 And that brings me to the next point for the
3 government, your Honor, which is the defendant's
4 sentence here should reflect that he was involved in
5 sustained and persistent behavior. As I've talked
6 about before, this was a highly successful retail
7 operation. Mr. Sullivan, as noted in the government's
8 sentencing memorandum, worked quite closely with
9 Mr. Hernandez to facilitate the successful operation.
10 And it was because of his day-to-day participation,
11 that persistent criminal behavior that he engaged in
12 with Mr. Hernandez, that the organization flourished as
13 it did. So I think the punishment should reflect that,
14 your Honor.

15 And finally, your Honor, I'd just ask you to
16 keep in mind when you sentence him, as I've said before
17 in coconspirator cases whenever I've appeared before
18 you, that the purpose of this investigation wasn't
19 simply to address a drug-trafficking problem. It was
20 to address an identified problem where there was an
21 unholy alliance between drug trafficking and gang
22 activity.

23 And as noted in the government's sentencing
24 memorandum in the attachments to that, this defendant
25 played a significant role in both of those activities.

1 There are two things which, if I may, I'd just like to
2 briefly directly comment on, your Honor. And that's
3 this: On April 24th of 2015, the defendant was
4 monitored in a conversation with another individual.
5 To put this in perspective, Josue Harney was a
6 member-- also referred to as "Geek," that was his
7 nickname. Josue Harney was a member of C-Block or The
8 Fam or TFD, whatever moniker you use for the group of
9 which Mr. Sullivan is clearly associated to. Josue
10 Harney, a member of that group, was killed, I believe
11 I'm going to say, 2014, but my dates are off. It might
12 been before that, your Honor.

13 In any event, the killing of Josue Harney, aka
14 "Geek," was a significant fact for members of C-Block.
15 He was very close to them and affiliated with them. In
16 the Attachment B which I provided to the Court, which
17 is the music videos and the still shots and the music
18 videos, you see many of the members of C-Block wearing
19 "I think I'm Geek" shirts in those music videos, one of
20 which through the city Mr. Sullivan appears in while
21 other people are wearing the "I think I'm Geek"
22 t-shirts representing their affection for Josue Harney
23 and their anger at his loss.

24 That was manifest on April 24th. The
25 defendant's -- the affect that that murder had on the

1 defendant was the fact that on that April 24th
2 intercepted conversation on that day, and this is at
3 page 17 of Exhibit A to the government's sentencing
4 memorandum, a caller calls up Mr. Sullivan and says, "I
5 got the drop man." And Mr. Sullivan says, "You got the
6 drop?" And the caller says, "Yeah, on this nigga, I
7 know where he lives at." And Mr. Sullivan says, "Who?"
8 And the caller says, "(Unintelligible) killed Geek man.
9 The Whiteboy called me and told me the exact house he
10 lives in man." And Sullivan says, "Let's go get him."
11 And the caller says, "That's what I'm sayin'. I got my
12 own grip right now. I got my own grip right now."

13 I don't have -- and the investigators simply
14 don't have the epilog to that conversation, but that's
15 April 24th of 2015, which I think is a reflection of
16 the defendant's mindset at that time. Now, bear in
17 mind as well to put things in perspective, he had been
18 shot in February of 2015, two months earlier at the car
19 wash on Broad Street in Providence. He was not
20 cooperative with the police or the police perception
21 was that he was not cooperative with their
22 investigation. So the individual who shot him was not
23 identified by the police, but the strong suspicion was
24 that it was related to gang activity.

25 And as noted in the government's sentencing

1 memorandum, there was another shooting at that same car
2 wash when Christian Nunez was there on May 4th of 2015.
3 Stepping back, April 24th of 2015, he has this
4 conversation with an unknown caller. Three days later,
5 April 27th of 2015, he has a conversation with
6 Mr. Hernandez. And that's set forth at paragraphs 32
7 to -- excuse me, 32 and 33 of the presentence report.

8 And the significance of that conversation on
9 April 27th is this, your Honor: Near 9:30 p.m.
10 Mr. Hernandez has a call with an individual who has
11 been identified by the agents as Quincy. They didn't
12 know his actual identity. Quincy tells Hernandez that
13 he's seen people on Croyland Road in Providence who are
14 perceived to be rivals of the C-Block TFD group.

15 Almost immediately after that conversation with
16 Mr. -- with Quincy, Mr. Hernandez has a conversation
17 with Mr. Sullivan. And in that conversation,
18 Mr. Hernandez says Quincy had said that the "M.O. Prat
19 niggas over there on Croyland squatting," and then he
20 says -- then Mr. Hernandez talks about the fact that
21 they got poles over there, meaning, they got guns over
22 there according to Quincy.

23 M.O. Prat is slang or code for members of Pine
24 believed to be a rival gang to C-Block. So at 9:34
25 Mr. Hernandez communicates this to Mr. Sullivan. At

1 9:46, just a few minutes later, location monitoring of
2 Mr. Sullivan's phone places it in the area of Route 95
3 and Huntington Avenue in Providence. That's about 4
4 miles away from -- in the 800 block of Prairie Avenue.

5 The significance of that space about 4 to 5
6 miles is 15 minutes later Mr. Sullivan is stopped on
7 Prairie Avenue or encountered on Prairie Avenue by
8 members of the Providence police and members of the
9 Safe Streets Task Force. And they conduct what they
10 thought was a thorough search of his motor vehicle
11 believing that there was a firearm inside of it because
12 during that call at 9:30 between Mr. Sullivan and
13 Mr. Hernandez, Mr. Sullivan says to Mr. Hernandez, "I
14 wanna go over and slam on them," he says. "I wanna do
15 something. That'd be good, 'cause I got it on me," he
16 says.

17 So they stop the vehicle at 10:01. It's
18 traveled 4 miles. It believes Mr. Sullivan's 4 miles
19 from Huntington Avenue over to Prairie Avenue. They
20 search the vehicle between 10:00 and 10:30. They don't
21 find a firearm.

22 Shortly after he's encountered by the police,
23 Mr. Sullivan calls Mr. Hernandez and they have another
24 conversation. In this conversation, Mr. Sullivan says,
25 he says, I was stopped. "I said he's gonna find it,

1 nigga. It was in the glove, everything. I don't know
2 how the fuck they didn't find it."

3 Then he goes on to describe what sounds -- and
4 this is in paragraph 33 of the presentence report --
5 describes -- it appears to be him describing how you
6 actually locate the firearm inside the vehicle. And
7 then he says -- Mr. Sullivan says to Mr. Hernandez,
8 "And ya know what's crazy, nigga? That I was gonna go
9 down, I was gonna just pull up to Van Buren" -- that's
10 a residence that's associated with Mr. Sullivan -- "and
11 I was like, no. Fuck that, I'm gonna go flame on these
12 niggas. I was like so easy. Fuck them. I'm just
13 puttin' my car on Prairie, flame on them and drive
14 off."

15 Prairie Avenue, the place where he was stopped,
16 your Honor, is one block over from Croyland Road, the
17 location where Mr. Hernandez had told him about a half
18 hour earlier that the M.O. Prat niggas were squatting.
19 This information, of course, was rapidly processed by
20 the investigators. There were subsequent phone calls
21 that led investigators to believe that the firearm
22 wasn't in Mr. Sullivan's vehicle.

23 So by the time they could act, they simply
24 didn't have probable cause to go to a place and find
25 it. But the fact of the matter remains that his own

1 words suggest between April 24th and April 27th what
2 his mindset was while he was out distributing drugs and
3 engaging as this manager of this drug-trafficking
4 operation.

5 So as I said earlier, your Honor, the
6 investigation was significant to investigate because
7 there was this unholy alliance between the drug
8 trafficking and the violent activity associated with
9 it. So for these reasons, your Honor, we would suggest
10 that in that space between five years and six years,
11 that a sentence halfway between, five and a half years
12 to serve or 66 months, would be appropriate to
13 accomplish all of the objectives of Section 3553.

14 THE COURT: All right. Thank you, Mr. Daly.

15 MR. DALY: Thank you, your Honor.

16 THE COURT: Mr. Calcagni.

17 MR. CALCAGNI: Good afternoon, your Honor.

18 THE COURT: Good afternoon.

19 MR. CALCAGNI: Your Honor, when Mr. Sullivan was
20 arrested back in 2015, he had the mind of a boy. In
21 the last nearly two years, I can tell you as this
22 gentleman's lawyer, he's become a man. A lot has
23 happened to Mr. Sullivan in the last two months that I
24 think this Court can agree has given him great insight
25 into his admitting this conduct, the impact it's had on

1 others, including himself, as well as family, friends
2 in the community and has given him a fresh outlook on
3 the future.

4 Your Honor, Mr. Sullivan sent a letter to you
5 authored in his own words, in his own handwriting, and
6 I played no role whatsoever in that letter, setting
7 forth his feelings about this case, how it's impacted
8 himself and others and how he intends to go forward in
9 the future. And I hope your Honor will credit that
10 letter.

11 Your Honor, it should come as no surprise to you
12 that I'm asking for a sentence of 60 months. I ask for
13 that sentence for a number of reasons. Mr. Daly
14 referenced Mr. Sullivan's criminal history. I'm sure
15 you noted in my written submission that I suggest to
16 you that the criminal history overstates the
17 seriousness of this gentleman's background. He
18 essentially received one point in that criminal history
19 for minor possession of marijuana, \$5 bag, nearly ten
20 years ago.

21 And when you consider where marijuana has come
22 in the last few years and that we're decriminalized
23 here in Rhode Island, what he was arrested and charged
24 for back then is not even criminal here today. That's
25 just one way of looking at the fact that the criminal

1 history overstates the seriousness.

2 Mr. Daly referenced my point to the Court in
3 writing about the two-point enhancement for which he
4 was on state probation, and I have those arguments to
5 you in writing. I don't want to belabor them.

6 What you need to decide today, your Honor, is
7 what's fair and reasonable in light of this defendant
8 in all facts and circumstances. I was at the Wyatt
9 last night visiting Mr. Sullivan for the second day in
10 a row and on the way out, one of the high-ranking
11 officers there said to me, "Hey, Sullivan's involved in
12 that zombie heroin case?" And I said, "Yeah, you
13 didn't know that? He was the second guy in the
14 indictment."

15 And the officer tells me, "Wow, I'm really
16 surprised. That kid is one of the most respectful,
17 polite guys around here. When he first came in, he had
18 some issues, but believe me, that kid's well liked.
19 And I've heard that from a number of officers."

20 Why do I tell that to you? I suggest that to
21 you today because this kid has changed. He'll tell you
22 himself in a few moments. If you take a look at the
23 mitigation evidence I submitted, he's used his time at
24 Wyatt wisely. He's undergone classes, he's completed
25 them, he has a job of trust and responsibility and he

1 has never been to jail before in his life. Yeah, he's
2 had quite a few problems along the way whether it be
3 his childhood, uprooted to Rhode Island from New York,
4 getting involved in the bad neighborhoods with the
5 wrong people in the wrong community, no doubt about it.
6 But this gentleman has an entirely changed outlook on
7 life and that's got to be important to you today, your
8 Honor, when you decide how much of a break, if you
9 will, you choose to give him.

10 Now, a few weeks ago Jonathan Hernandez was
11 before you for sentencing, and I learned that the Court
12 gave that gentleman a 72-month sentence. The reason I
13 bring that to your attention is because you have to
14 compare today, your Honor, what you're going to give
15 Mr. Sullivan in light of what you did for
16 Mr. Hernandez. I prepared a chart that I'd like to
17 reference just for purposes of argument. And I gave it
18 to your clerk before Court took session today so we
19 didn't have to fire up the ELM0. But Mr. Hernandez
20 came before the Court with a higher Criminal History
21 Category, nearly double the Criminal History points,
22 and a higher Guideline range of 121 to 151. The Court
23 gave him about 60 percent of the lower end of the
24 Guidelines.

25 And when you do that math for Mr. Sullivan, the

1 numbers anyhow, pan out that he would get less than 60
2 months, which of course the law doesn't even authorize
3 here. So comparatively speaking, considering
4 Mr. Hernandez who, according to the government's
5 evidence, the government's theory and the government's
6 investigation, falls below Mr. Hernandez on the
7 responsibility spectrum, if you will. I suggest to the
8 Court that fairness would dictate he get a lesser
9 sentence.

10 The Court's going to ask Mr. Hernandez -- I'm
11 sorry, Mr. Sullivan -- what his plans are when he gets
12 out of jail. Let me let your Honor know that he's
13 already thinking ahead. You see these people in the
14 courtroom today? It's a small Army of family, friends
15 who have come here to support him. Some from inside of
16 Rhode Island, others from many miles away as far as
17 Georgia.

18 Mr. Sullivan's family gets the message that
19 Mr. Sullivan continuing to reside in Rhode Island,
20 continuing to be amongst the community, an environment
21 and of people who contributed to his actions and his
22 demise here today, must stop. The family and Mr.
23 Sullivan are looking to relocate him to Georgia where
24 he can join his twin sister, who is a college graduate
25 and who has a career as a social worker, to give him a

1 real opportunity.

2 No, he's never been to college. He didn't even
3 graduate high school. But if you take a look at the
4 statements of support given by folks that know him, if
5 you take a look at the structure and the content of his
6 letter, one thing we all have to acknowledge, despite
7 the criminal history, despite his status here today,
8 this young man is intelligent, which means he knows
9 right from wrong, which means he has the ability and
10 potential to succeed.

11 I've done all I can for him as his lawyer. Your
12 Honor has an ability to give him a second chance and a
13 fresh start. He'll make most of all of the
14 opportunities available to him in the BOP just as he
15 has at the Wyatt, and I'm comfortable suggesting to
16 your Honor that I don't think we're going to see more
17 of Mr. Sullivan in the future. For that I ask you to
18 give him a sentence of 60 months.

19 THE COURT: Okay. Thank you, Mr. Calcagni.

20 All right. Mr. Sullivan, do you want say
21 anything before I impose sentence?

22 THE DEFENDANT: Yes, your Honor. First I want
23 to thank you, your Honor, for giving me the opportunity
24 to speak. I hope you received my letter.

25 THE COURT: I did.

1 THE DEFENDANT: I hope you had a chance to read
2 it.

3 THE COURT: I did.

4 THE DEFENDANT: Thank you. First and foremost,
5 I want to start by saying I want to apologize to the
6 United States government, my family, the Court, my
7 community, and even my codefendants that were very
8 young in this case, your Honor, and they didn't deserve
9 to be here.

10 I also want to say that my time here has helped
11 me reflect on the person I was, you know. I'm in no
12 way proud of the person I was and the life I was
13 living. I was a fool. I was foolish, you know. I
14 should have thought about my family and the
15 consequences and the pain that I put my kids and my
16 family through.

17 I've been through a lot being here, and it
18 helped me rehabilitate myself to really find out and
19 put my goals and my priorities together, your Honor. I
20 know exactly what it is I want to do when I get out. I
21 just want to make my family proud and be a good example
22 for my kids.

23 I have missed out on a lot of birthdays and
24 graduations and a lot of special moments that I know
25 I'll never get back in my kids' life, you know. And I

1 just want to be there, and I want them to know that I
2 love them. And I never want to put them through this
3 again, you know.

4 I never really did time before. I never knew it
5 was going to be like this. If I knew, I would have
6 never put my family through this, you know. I just
7 want you to know, your Honor, that I'm really -- I
8 really regret my decisions, and I just hope you give me
9 a second chance to make my family proud again and to
10 show the Court my good intent. Thank you, your Honor.

11 THE COURT: All right. Thank you, Mr. Sullivan.

12 So let me just ask you a couple of questions and
13 maybe make a few comments. You know full well that
14 I've gotten to know this case very well through all the
15 defendants that I've had before me and particularly the
16 two defendants that I have taken into the what we call
17 our deferred sentencing program. I get to spend time
18 with them every month, and I think I've gotten to know
19 them a little bit. And they are doing so far really,
20 really well. And they are very lucky that they have
21 been able to take advantage of a program like that and
22 avoid serious jail time. They did spend some time in
23 jail as you know; you were with them.

24 So I think I've gotten a little bit of a picture
25 into this organization, into this world. And I think

1 you've said it pretty well when you said you were all
2 acting in a really kind of foolish way. And it's true,
3 but it's very dangerous foolishness. This isn't a
4 game.

5 And Mr. Daly outlined some behavior on your part
6 that is pretty hard to ignore and it's pretty hard to
7 deny what Mr. Daly is saying about what was going on.
8 And I'm not an idiot, I'm not a fool; I can tell what
9 was going on here. And now that you've had a little
10 time to spend in jail, you really see, you were that
11 close, you're that close from spending the rest of your
12 life in jail if you didn't get killed.

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And, you know, it's this gang life
15 that for some reason seems so appealing and sexy and
16 whatever at the time you're in it. I'll tell you just
17 very briefly, I have spent time down in Puerto Rico
18 where I help out with the judges down there. And it's
19 this gang life way beyond anything you have ever even
20 thought of in terms of the killing and the violence;
21 killing gang members, killing each other, killing
22 police officers, shooting down police helicopters,
23 shooting innocent people driving down the highway while
24 they shoot 600 bullets at each other, trying to take
25 control of one housing project or another. Defendants

1 who ended up facing the death penalty who narrowly
2 escaped the death penalty by one vote of a juror and
3 other defendants who I have sentenced to life without
4 parole. And in the federal system life without parole
5 means the rest of your life, and it's given me a
6 perspective on where this could go, where this life
7 goes.

8 So we sit up here in Providence and we have
9 these problems and we think these problems are bad, and
10 they are bad, but you go down there and spend a little
11 time and you could see what it could become. It's El
12 Salvador is what it is. That's how bad it is.

13 And that's the track that you are starting to
14 take the steps to be on. And that's why law
15 enforcement is cracking down and acting quickly like
16 they did in this case to interdict where you and others
17 were about to do stuff that could take you in that
18 direction. And it's a big credit to them that they
19 were able to respond so quickly. In a lot of ways they
20 saved your life.

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: So I mention all that just to
23 reinforce the idea that this is the path that you were
24 on. And you were not just on it yourself, but you were
25 bringing others with you, guys like Marklyn Brown and

1 Christian Nunez who are just kids. And you were
2 bringing them along, you and others.

3 So now, I've taken an approach with the
4 sentences in this case to try to recognize that we
5 can't just put people in prison and expect everything
6 magically to get better. And that's why I put Marklyn
7 Brown and Christian Nunez into that deferred sentencing
8 program. Mr. Daly argued against that, and I have a
9 lot of respect for the arguments that he made -- or at
10 least he urged caution and he had good reason to do so,
11 but I really do believe that as bad as a lot of this
12 stuff is, they got you in time so that you have an
13 opportunity to turn this around.

14 Now, you're not going to have the benefit of a
15 program like that, but you have the opportunity to turn
16 it around by using the time that you spend in prison
17 constructively and making good on all the things that
18 you've said here today and your attorney has said here
19 today about what you want to do. And it is impressive;
20 you have all these people here to support you and
21 you're very lucky that you have this much support.

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: So you have the structure to make it
24 work when you get out. But at the end of the day, it's
25 going to be up to you. None of them can make this

1 work. Only you can make it work.

2 So, you know, I have to believe that the
3 sentences that I've been trying to impose here are
4 enough to get a message across to all of you, but not
5 so much that you can't recover from them. And I want
6 you to have the opportunity to turn it around. And I
7 think a sentence that the Guidelines would call for, if
8 I were to sentence you to that kind of time, I think it
9 would be too much and that's what I said to
10 Mr. Hernandez. I think it would be too much.

11 So, you know, you've come along after I've
12 sentenced a lot of others so, as Mr. Daly recognized,
13 you know, here we are. The mandatory minimum at the
14 low end, I sentenced Mr. Hernandez to 72 months so
15 there's not a lot of room there. So it isn't a big
16 mystery where you're going to end up. You're going to
17 end up in that range.

18 I think Mr. Daly's suggestion of 66 months is
19 appropriate and that's what I'm going to impose. It's
20 only six months above the mandatory minimum. It's a
21 symbolic six months. Symbolic because it represents
22 basically where you stood in the organization. And
23 that's really the only significant difference between
24 you and Hernandez is that you were not the top guy, but
25 you were the second guy, as I understand it.

1 So, you know, that's the sentence that I think
2 is appropriate and that I'm going to impose. I hope
3 that with all the support, with all of what you've said
4 in your letter, with all that you have suggested here
5 through Mr. Calcagni, that this really will be the
6 warning shot for you, the shot that keeps you and
7 teaches you that this is not where you want to be for
8 the rest of your life.

9 I've seen the other side. You don't want to be
10 there. You've seen the inside, and I know you don't
11 want to be there. So that's really all that I have to
12 say before imposing sentence.

13 It sounds like your intention is to relocate to
14 Georgia, is that right?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Okay.

17 THE DEFENDANT: I also want to get my CDL and
18 take whatever trades I could. I really want to do HVAC
19 and electronics.

20 THE COURT: All right. Well, that's good.
21 You're going to have -- hopefully you'll have some
22 opportunities when you're in the federal facilities to
23 experiment with some trades and some skills. I have
24 been through a lot of prisons, federal prisons, around
25 the country and some of them have really good programs,

1 particularly the one up in New Hampshire, Berlin, New
2 Hampshire. And you might have an opportunity to
3 develop some of those interests in those facilities.
4 So you should really pursue it.

5 So all right. So in the matter of the United
6 States vs. Davis Sullivan, the defendant is remanded to
7 the custody of the federal Bureau of Prisons for a term
8 of incarceration of 66 months to be followed by four
9 years of supervised release. There will be no fine in
10 this matter. There is a special assessment of \$100
11 that the defendant is required to pay.

12 During his term of supervised release, the
13 defendant will participate in a program of substance
14 abuse treatment, a program of substance abuse testing,
15 up to 72 drug tests per year, and he shall contribute
16 to the cost of all ordered treatment and testing if he
17 has the ability to pay as determined by the probation
18 officer.

19 Although it hasn't been suggested by anyone, I
20 believe another appropriate restriction during the
21 defendant's supervised release is to restrict his
22 contact with the other members of the gang, C-Block,
23 the same no-contact group that I imposed on Mr. Brown
24 and Mr. Nunez. I believe it would be the same group.
25 So I'm going to ask the government to prepare that

1 list, and I'm going to impose that no-contact
2 requirement on you as well.

3 I don't know if you're aware of what I'm talking
4 about. Are you?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: All right. Well, I think if you
7 move to Georgia, it's not really going to be an issue
8 for you. But in the event you don't, I don't want you
9 associating with those folks during your term of
10 supervised release. That's one way to ensure that you
11 don't go back into that world.

12 THE DEFENDANT: I understand, your Honor.

13 THE COURT: All right. The defendant, I believe
14 he waived his right to appeal as part of his plea
15 agreement.

16 MR. CALCAGNI: No, your Honor.

17 THE COURT: No?

18 MR. CALCAGNI: This was a naked plea.

19 THE COURT: This was not a plea agreement? All
20 right. Then my mistake.

21 Then I need to advise you that you have the
22 right to appeal the sentence that I've just imposed.
23 If you want to appeal it, you have to do that within 14
24 days of the judgment which means 14 days essentially
25 from today or tomorrow. Mr. Calcagni can assist you

1 with an appeal if you wish to do that.

2 All right. Is there anything further that we
3 need to take up?

4 MR. DALY: I don't believe so, your Honor.

5 MR. CALCAGNI: Your Honor, I had two
6 recommendations at the end of the sentencing memo. One
7 being a recommendation on placement. The second being
8 a recommendation on RDAP if he qualifies.

9 THE COURT: Where was the placement request?

10 MR. CALCAGNI: As close to Rhode Island as
11 possible just because of the small children.

12 THE COURT: All right. I'm happy to recommend
13 both of those things, that you be considered for the
14 RDAP program if you qualify.

15 THE DEFENDANT: Thank you, your Honor.

16 THE COURT: And as far as placement close to
17 Rhode Island, I do agree that that would be helpful.
18 I'm not actually sure which facility is closest to
19 Rhode Island at this point.

20 Do you know, Mr. Calcagni?

21 MR. CALCAGNI: Your Honor, I know there's
22 Devens, there's Dix, there's the one in New Hampshire.
23 A lot will have to do with how they classify him.

24 THE COURT: I doubt you qualify for Devens, but
25 if you do end up in Berlin in New Hampshire, there are

1 -- as I said, it's -- I was just in that facility maybe
2 six, eight months ago. It's a very impressive
3 facility. So I'll recommend you be incarcerated in the
4 closest facility that is feasible.

5 All right. We'll be in recess.

6 THE DEFENDANT: Thank you, your Honor.

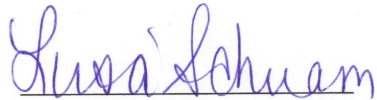
7 COURTROOM DEPUTY: All rise.

8 (Time noted: 4:14 p.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript from the
record of proceedings in the above-entitled matter.



Official Court Reporter

July 24, 2017